

UNITED STATES OF AMERICA

P001

v.

**RULING ON GOVERNMENT  
MOTION FOR CONTINUANCE**

**AHMED KHALFAN GHAILANI**  
a/k/a "Fupi", "Haytham",  
"Abubakar Khaflan Ahmed",  
"Sharif Omar"

13 February 2009

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On 23 January 2009, the Government moved this Commission to issue a continuance until 22 May 2009. The relief requested was based generically upon the interests of justice, as well as, *inter alia*, direction from the Secretary of Defense and Executive Order of the President of the United States.

The Defense countered the Government request citing varying levels of prejudice to the accused, the indefinite nature and scope of the review process cited by Executive Order relied upon in part by the Government, as well as, some assertions of unlawful command influence.

The Schedule of Trial presently ordered is incorporated by reference to the decision made herein.

Oral argument was not requested by the Government unless required by the Commission. The Defense did not request oral argument unless the Commission denied their responsive filing to this motion (Motion to Dismiss). By default, the Defense's Motion to Dismiss is denied by the present ruling.


**RULING:** The Government has met their burden to convince this Commission that a Continuance, for good cause demonstrated or inferred, is in the overall and general interests of justice. This Ruling is based exclusively upon this Commission's belief that no prejudice will inure to the detriment of the accused based upon the current trial schedule and the continued progression of pre-trial discovery. This order, is emphatically not based on any perceived interjection by the Secretary of Defense or President of the United States into the smooth administration of justice of this Military Commission specifically or the military commission process in general.

However, this Commission considers delays during the pendency of this Continuance for the administration and pre-trial processing of this case not to be in the interests of justice. Accordingly, it is ordered and directed that:

- pre-trial discovery will proceed with all due dispatch in accordance with the Rules of Court.
- an updated Schedule for Trial will be negotiated and subsequently ordered based upon this Ruling. While filing of motions will be expected and accepted by the Commission, no R.M.C. 803 sessions will be directed until the expiration of this continuance.
- the Defense Motion to Compel Discovery (D002) is held in abeyance pending resolution of an undated Schedule of Trial.

With the caveats expressed, the Government's motion for a continuance until 22 May 2009 is **GRANTED**.

So ordered this 13<sup>th</sup> Day of February, 2009.

  
B. W. MacKENZIE  
Military Judge